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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

KENNETH A. BIANCHI, )  
 )  
Plaintiff, )  
 )  
v. )  
 )  
UNITED STATES OF AMERICA, )  
 )  
Defendant. )

No. C 05-5274 EDL

**STIPULATION FOR COMPROMISE  
SETTLEMENT AND RELEASE AND  
~~PROPOSED~~ ORDER**

1 IT IS HEREBY STIPULATED by and between the undersigned parties and their  
2 attorneys, that this action be settled and compromised, as follows:

3 1. The United States shall pay to Plaintiff KENNETH A. BIANCHI and his attorney,  
4 Mark Abelson, the collective sum of \$675,000.00 (six hundred seventy-five thousand dollars and  
5 no cents). Payment shall be made by check made payable to Kenneth Bianchi and Mark  
6 Abelson.

7 2. Payment of the above by the United States is in full and final settlement and  
8 satisfaction of any and all claims and demands which Plaintiff KENNETH A. BIANCHI has or  
9 may hereafter acquire against the United States of America and any other named defendants  
10 herein, or any of its departments, agents, servants, employees or attorneys, arising from the  
11 events described in Plaintiff's pleadings in this action.

12 3. Plaintiffs' complaint against the United States of America in this action shall be  
13 dismissed with prejudice. In consideration of the terms enumerated herein and above in  
14 paragraph 1, Plaintiff KENNETH A. BIANCHI agrees that, within five days from notification by  
15 the US Attorney's Office that the settlement amount is available, Plaintiffs' counsel will execute  
16 and forward to Assistant United States Attorney Owen P. Martikan for execution and filing with  
17 the court a stipulation for dismissal with prejudice in a form mutually agreeable to the parties.  
18 AUSA Martikan will execute and file the stipulation of dismissal within five days of his receipt  
19 thereof. On the date that the dismissal is filed, the settlement amount shall be delivered to  
20 Plaintiff's counsel.

21 4. Plaintiff KENNETH A. BIANCHI will accept the payments described herein in  
22 full settlement and satisfaction of any and all claims and demands which KENNETH A.  
23 BIANCHI, his successors or assigns may now have or hereafter acquire against the United States  
24 of America or any of its departments, agents, servants, employees or attorneys, on account of the  
25 events described in Plaintiff's pleadings in this action.

26 5. Plaintiff KENNETH A. BIANCHI agrees to indemnify the federal defendants for  
27 any and all liens, known or unknown, lodged against the settlement agreement in this action.  
28

1           6.     Plaintiff KENNETH A. BIANCHI does hereby release and forever discharge the  
2 federal defendants, the United States and any and all of its past and present officials, employees,  
3 agents, attorneys, their successors and assigns, from any and all obligations, damages, liabilities,  
4 actions, causes of actions, claims and demands or any kind and nature whatsoever, whether  
5 suspected or unsuspected, at law or in equity, known or unknown, arising out of the allegations  
6 set forth in Plaintiffs' pleadings in this action.

7           7.     California Civil Code Section 1542 provides as follows:

8                     A general release does not extend to claims which the creditor does  
9                     not know or suspect to exist in his favor at the time of executing  
10                    the release, which if known by him must have materially affected  
                      his settlement with the debtor.

11     Plaintiff KENNETH A. BIANCHI has been apprised of the statutory language of Civil Code  
12     Section 1542 by his attorney, and fully understanding the same, nevertheless elects to waive the  
13     benefits of any and all rights he may have pursuant to the provision of that statute and any similar  
14     provision of federal law. Plaintiff KENNETH A. BIANCHI understands that, if the facts  
15     concerning his injuries and the liability of the government for damages pertaining thereto are  
16     found hereinafter to be other than or different from the facts now believed by them to be true, this  
17     Agreement shall be and remain effective notwithstanding such material difference.

18           8.     Attorneys' fees and all costs shall be paid from, and not in addition to, the  
19     payments described in paragraph 1, above. It is also understood by and among the parties that  
20     pursuant to Title 28, United States Code, Section 2678, attorneys' fees for services rendered in  
21     connection with this action shall not exceed 25 percent of the amount of the compromise  
22     settlement.

23           9.     This is a compromise settlement of a disputed claim and demand, which  
24     settlement does not constitute an admission of liability or fault on the part of Defendant United  
25     States of America, the federal defendants, or any of their agents, servants, employees or  
26     attorneys, on account of the events described in Plaintiffs' complaint in this action.

10. This instrument shall constitute the entire agreement between the parties, and it is expressly understood and agreed that the Agreement has been freely and voluntarily entered into by the parties hereto with the advice of counsel, who have explained the legal effect of this Agreement. The parties further acknowledge that no warranties or representations have been made on any subject other than as set forth in this Agreement. This Agreement may not be altered, modified or otherwise changed in any respect except by writing, duly executed by all of the parties or their authorized representatives.

IT IS SO STIPULATED.

**For Plaintiff Kenneth Bianchi.**

CAMPAGNOLI, ABELSON  
& CAMPAGNOLI

DATED: \_\_11/6/06\_\_

By: /s/  
MARK B. ABELSON  
Attorney for Plaintiff

**For The Federal Defendants.**

KEVIN V. RYAN  
United States Attorney

DATED: \_\_11/6/06\_\_

By: /s/  
OWEN P. MARTIKAN  
Assistant United States Attorney  
Attorneys for Federal Defendants

~~PROPOSED~~ ORDER

Pursuant to stipulation, IT IS SO ORDERED.

DATED: \_\_November 13, 2006\_\_

ELIZABETH D. LAPORTE  
United States Magistrate Judge

